

1 JUDGE CHACHKIN: We are talking about 351? Is
2 that correct?

3 MR. KELLER: We are still on Exhibit 351.

4 BY MR. KELLER:

5 Q Now, I want to make sure I understand your
6 testimony. Is your testimony that that is your signature,
7 but you do not have a specific recollection of executing
8 this document? Is that correct?

9 A It looks like my signature, yes.

10 Q Now, the date of the signature is 9-4?

11 A Yes, it looks like 9-4.

12 Q That looks like your handwriting as well?

13 JUDGE CHACHKIN: Is that right? That is your
14 handwriting?

15 THE WITNESS: It looks like my handwriting.

16 BY MR. KELLER:

17 Q Now referring back for one more moment to Exhibit
18 314, and we were just talking about the fax header a moment
19 ago. The fax header date on Exhibit 314 is September 3,
20 1992, correct?

21 A Are you asking?

22 Q Yes. The fax header on Exhibit 314, the undated
23 letter, the draft letter, the fax header that I asked you
24 about a moment ago.

25 A Yes.

1 Q That is September 3, 1992?

2 A Yes.

3 Q Which is a day prior to the 9-4-92 date on this
4 declaration, correct?

5 A Yes.

6 Q Is it your practice when you sign something that
7 is an official document, you would not just sign it without
8 reading it, would you?

9 A You would think so, but, no.

10 Q This document is not a very long document that
11 takes a long time to read, is it?

12 A Are you asking me a question?

13 Q Yes. Is it true that this statement that you are
14 signing here is just one sentence long or two sentences
15 long, correct?

16 A Yes.

17 Q And it does make clear reference that it is
18 referring to a foregoing document, correct?

19 A That's what it says, yes.

20 Q So if you read this, you would know that when you
21 were signing this that there was some other pieces of paper
22 that went along with this, correct?

23 A Yes.

24 Q Mr. Cordaro, is it possible that WTB Exhibit No.
25 319, the handwritten list, --

1 A Yes.

2 Q -- was not provided to you in connection with the
3 execution of the management agreement, but was rather
4 provided to you in connection with the dispute that this
5 letter relates to?

6 In other words, rather than being provided to you
7 in 1994 when the management agreement was being executed, is
8 it not possible that instead it was provided to you in 1992
9 in relationship to this matter for which Brown and
10 Schwaninger wrote this letter?

11 A I don't know.

12 Q Well, this letter was written by Brown and
13 Schwaninger, correct, or it is on Brown and Schwaninger
14 letterhead, correct?

15 A Yes.

16 Q Just take a moment to review the letter. You do
17 not need to read it, but I want you to skim through it.

18 Take a moment and read to yourself the first
19 paragraph of the letter. Exhibit 351, the first page, right
20 after it says, "Dear Mr. Haller." Just read the first
21 paragraph.

22 (Pause.)

23 Is it your understanding that in this letter on
24 Brown and Schwaninger letterhead that Brown and Schwaninger
25 are responding to the FCC to a complaint that had been

1 raised by Mr. Doering?

2 MR. SCHAUBLE Objection. Asking the witness to --

3 JUDGE CHACHKIN: Overruled.

4 MR. KELLER: I am asking if that is his
5 understanding of the paragraph he just read.

6 JUDGE CHACHKIN: That is certainly proper.
7 Overruled.

8 THE WITNESS: Would you repeat your question,
9 please?

10 BY MR. KELLER:

11 Q I am asking is it your understanding of the
12 paragraph you just read that this purports to be a letter in
13 which Brown and Schwaninger is responding to some sort of a
14 complaint raised by Mr. Doering?

15 A Yes.

16 Q Now referring again to Exhibit No. 319, WTB
17 Exhibit No. 319, we noticed at the bottom of the letter
18 there is a reference after this list, "Same frequency as
19 Doering's SMR," correct?

20 A Yes.

21 Q And there is also a listing here, Attorney Curt
22 Brown of Brown and Schwaninger, Attorney-At-Law, correct?

23 A Yes.

24 Q Okay. Also we have talked about there are several
25 references throughout this document to end user licenses and

1 applications for end user licenses, correct?

2 A Through which document?

3 Q Exhibit No. 319.

4 A Yes.

5 Q You were in the room awhile ago, and you heard the
6 Bureau. I understand you may not have any personal
7 knowledge, but you heard the Bureau stipulate that the FCC
8 eliminated end user licensing in the fall of 1992, correct?

9 A Yes.

10 Q When you put all those pieces together, is it
11 possible and does that refresh your recollection and is it,
12 therefore, possible that this document was really provided
13 to you in 1992 rather than 1994?

14 MR. KNOWLES-KELLETT: Objection, Your Honor. It
15 either has to refresh his recollection --

16 JUDGE CHACHKIN: Overruled. Overruled.

17 MR. KELLER: I am just asking if it is possible.

18 MR. KNOWLES-KELLETT: Okay. If that is his
19 understanding, yes.

20 BY MR. KELLER:

21 Q Is it possible you are mistaken and that this
22 document was actually provided to you in 1992?

23 A I don't know.

24 JUDGE CHACHKIN: You do not know when it was
25 provided? Is that what you are saying?

1 THE WITNESS: Yes.

2 JUDGE CHACHKIN: So it could have been 1992

3 instead of 1994, as far as you are concerned?

4 THE WITNESS: Yes.

5 JUDGE CHACHKIN: All right.

6 BY MR. KELLER:

7 Q Mr. Cordaro, again on Exhibit 319, we discussed
8 before Item No. 3, you do agree refers to an application for
9 a new SMR base station at Santiago Peak, correct?

10 A Yes.

11 Q And the frequency 851.4125, correct?

12 A Yes.

13 Q And it indicates at the time of this writing it is
14 pending at the FCC, correct?

15 A Yes.

16 Q Please refer to WTB Exhibit No. 317. Take a
17 moment to review that.

18 Mr. Cordaro, is it not true that this is an
19 authorization in your name for an SMR base station at
20 Santiago Peak?

21 A Yes.

22 Q And is it not true that it is for the base station
23 frequency of 851.4125 megahertz?

24 A Yes.

25 Q I refer you to the upper right-hand corner where

1 it says "License Issue Date". It says 92-09-30, correct?

2 A Yes.

3 Q Is it correct that that would indicate that the
4 license was issued on September 30, 1992?

5 A That's what it says, yes.

6 Q Now, does that in any way, referring back to
7 Exhibit No. 319, refresh your recollection, referring
8 specifically to Item 3 on Exhibit 319, as to whether or not
9 it is possible this document was provided to you at least
10 prior to 1993 rather than in 1994?

11 A Yes.

12 Q You would say it is more than likely that it was
13 not provided to you in 1994, correct?

14 A It's possible, yes.

15 Q Can you think of any reason why in 1994 Mr. Kay
16 would be writing to you about references to a pending
17 application for a license that had been granted for a year
18 and a half?

19 A I --

20 MR. SCHAUBLE: Objection to the form of the
21 question.

22 JUDGE CHACHKIN: Overruled.

23 THE WITNESS: No, I can't think of any reason.

24 MR. KELLER: Just a moment, Your Honor.

25 (Pause.)

1 BY MR. KELLER:

2 Q Mr. Cordaro, first of all, you said there came a
3 time when you learned that the license, and I assume now we
4 are referring to the license that is the subject of -- I am
5 sorry, Your Honor, let me start over.

6 Mr. Cordaro, please refer to Exhibit No. 323.
7 Look at the first page of that exhibit. This is the radio
8 system management and marketing agreement. Exhibit 323 is
9 the one dated September 30, 1994.

10 I refer you to the first whereas clause. It is
11 true that this refers to the call sign WNXR890, correct?

12 A Yes.

13 Q Is it consistent with your understanding and
14 belief that WNXR890 refers to a base station at Rasnow Peak?

15 A A base station?

16 Q An SMR facility located at Rasnow Peak or that was
17 at the time authorized at Rasnow Peak.

18 A Yes.

19 Q While we are on that subject, at this time where
20 was your home in relation to Rasnow Peak?

21 A At the base of the hill.

22 Q So about how far were you from that transmitter
23 site?

24 A Two miles, if that.

25 Q Is it true it was less than ten minutes away from

1 your home?

2 A Less than ten minutes?

3 Q Yes.

4 A Twenty minutes. 30 minutes.

5 Q You did testify earlier in one of your depositions
6 ten minutes, correct, but it is the base of the hill,
7 correct? Do you still live there?

8 A No.

9 Q From what time did you live at that location at
10 the base of Rasnow Peak?

11 A '91 to just recently.

12 Q Now back to this. You testified that there came a
13 time when you learned that an assignment application was
14 pending at the FCC, correct?

15 A Yes.

16 Q You also testified that you were previously not
17 aware of that assignment, correct?

18 A Yes.

19 Q I believe you testified that you learned of this
20 from Mr. Barney Peterson after you left Mr. Kay's employ,
21 correct?

22 A Yes.

23 Q You left Mr. Kay's employ in May of 1995? Is that
24 not correct?

25 A Yes.

1 Q I would like to refer you now to WTB Exhibit No.
2 325.

3 My understanding of your testimony is that as to
4 this document, which is a one page letter purporting to be
5 on letterhead of Vincent S. Cordaro. Is 157 South Newbury
6 Lane, Newbury Park, California 91320, is that your address?

7 A Yes.

8 Q Was that your address in April of 1995?

9 A Yes.

10 Q And (805) 499-3545? Was that your telephone
11 number at that time?

12 A Yes.

13 Q What about this information along the bottom of
14 the letterhead here, the phone number again, a BBS number,
15 it looks like a CIS number. I gather that is a CompuServe
16 account number. Is that correct?

17 A Yes.

18 Q An AOL number and a ham radio call sign, et
19 cetera? That is all information that is accurate referring
20 to you?

21 A Yes.

22 Q But you have no recollection of preparing this
23 particular letter, correct?

24 A That's correct.

25 Q But that is your signature on the letter?

1 A Yes, it is. It looks like it.

2 Q This letter is a letter written to the FCC. Do
3 you see on there a round, circular "Received" stamp? It
4 says "Received, FCC," and then there is a "GBG" there. Do
5 you see that?

6 A Yes.

7 Q What date does it indicate that that was received,
8 if you can read it?

9 A It looks like the 18th.

10 Q The 18th of what?

11 A April.

12 Q April of 1995, which would be four days after the
13 date on the letter, correct?

14 A Yes.

15 Q Now, this is several weeks, if not a month, prior
16 to the time you left Mr. Kay's employ, correct?

17 A If you want the exact month, we can find it. I
18 don't remember the exact month I left. I left in the first
19 quarter of 1995. I started my new job in June of '95.

20 Q I understand you started your new job in June of
21 '95. That is correct.

22 I can understand that you do not remember for sure
23 whether you left in May or not. On what basis are you
24 saying it was the first quarter of '95? May would actually
25 be the second quarter.

1 A It could have been April. It could have been May.

2 Q You did give Mr. Kay at least 30 days notice,
3 though? You did testify to that, right?

4 A Yes.

5 Q Did you stay around during that 30 days?

6 A Not that I recall, no.

7 Q You did not continue to work during that time at
8 the office?

9 A No.

10 Q Now let me ask you this. I want to ask you some
11 questions about this computer project in which you were
12 using these DBF files. It is my understanding you were
13 trying to develop an application for Q&A. Is that correct?

14 A Yes.

15 Q Now, Q&A is a database application. Is that
16 correct?

17 A It's more than just a database, but, yes.

18 Q Let me back it up this way. I apologize. I
19 assume you have at least some more than passing familiarity
20 with computers, correct?

21 A Yes.

22 Q Can you explain to me the difference between
23 application software or application files and data files?

24 I am not talking now just about database. I am
25 talking about computer software in general. Explain to me

1 the difference between application files versus data files.

2 A It would depend on the language that you're
3 programming in. Certain languages compile both data and
4 programming all in one. Some languages separate the two.

5 Q I am well below the scale on that. Let me back it
6 down to make more simple terms.

7 First of all, the computer system that you run, is
8 that a DOS-based system? What was the operating system for
9 the computers that you used at Lucky's Two-Way?

10 A I didn't use any computers at Lucky's.

11 MR. SCHAUBLE: Objection, Your Honor. No
12 foundation that he used computers with respect to Lucky's
13 Two-Way.

14 MR. KELLER: I am sorry. That is my fault, and I
15 thank you for the correction.

16 BY MR. KELLER:

17 Q When you worked at Southland, the computer that
18 you worked on, the computer at your desk and the system that
19 you used in your duties at Southland, was that a DOS-based
20 system?

21 A It was Windows.

22 Q Okay. Windows. It was a Windows-based system,
23 and Windows is DOS related. Is that correct? Was it
24 Windows 3.1?

25 A Yes.

1 Q Now, when I use Windows software, for example, and
2 let me take word processing, for example. I know there are
3 some files. I use Microsoft Windows. There are some files
4 that actually make the program run when I execute the
5 program, and then there are other files that are my data
6 files. They are actually the documents that I write.

7 Those are two separate kinds of files in the
8 computer, correct?

9 A I don't understand the question.

10 Q Let me try it this way. Describe the software
11 package, Q&A, that you were using. Not the specific thing
12 you were doing. First I just want a basic layman's
13 understanding of what is Q&A.

14 A Q&A is an all in one package. It had word
15 processing, database management. I believe there was more
16 to it, but I don't recall the whole --

17 Q All right. Let's focus then on the database
18 management aspect of it. The database management portion of
19 Q&A, that allowed you to develop database applications?

20 A It created a simple -- yes, a simple management of
21 data.

22 Q And you were, if I understand your testimony, in
23 the process of attempting to use that to develop some sort
24 of an application that would have been useful to you on the
25 service side to access some of Lucky's data? Is that

1 correct?

2 A We were in the process of trying to improve what
3 we already had. We had something in place already that was
4 written.

5 Q What did you have already that was written? I do
6 not need a lot of detail. Basically what kind of
7 information did it allow you to access?

8 A It was a work order tracking program. It tracked
9 the process of work through the service. It pulled up a
10 customer's address. We had inventory, we had rentals, any
11 type of information we would track.

12 Q Now, are you familiar with what underlying data
13 files were generated by this application?

14 A Q&A?

15 Q Yes.

16 A It generated its own proprietary data file.

17 Q These were not DBF files?

18 A No, they were not.

19 Q Now, when I say DBF file, is it true that the
20 terminology that we use when we say DBF file comes from the
21 fact that the files, when you list them on the computer
22 screen, usually have the extension of some file named .DBF?

23 A Yes.

24 Q And it is true that that is a format for data
25 files in what is common in many database applications? Is

1 that not correct?

2 A Yes.

3 Q But you are telling me Q&A did not use that
4 format?

5 A No.

6 Q Then, how was it that you were proposing to use I
7 believe you said the sample data in DBF format in
8 conjunction with the Q&A application which you were
9 developing? Could Q&A read DBF files?

10 A Yes.

11 Q So what did you do? Did you open these files in
12 Q&A, and did you do something with them then?

13 A You could import the data into Q&A and bring the
14 data into Q&A to create a template.

15 Q Is that what you did in this case?

16 A Yes, that's what we attempted to do.

17 Q Let me make sure I understand that. I am not
18 trying to trick you. I am sincerely just trying to -- I was
19 trying to trick you earlier, but now I am sincere.

20 If I am understanding, you say you got these files
21 from Craig Sobel through whatever method. You do not
22 remember for sure. You then imported them into Q&A. Would
23 it be true that at that point you did not mess with the DBF
24 files anymore?

25 MR. KELLER: That is a computer term, Your Honor,

1 mess with.

2 THE WITNESS: Mess? What do you mean?

3 BY MR. KELLER:

4 Q Well, is it true that you took the files, the DBF
5 files that were provided to you, imported them into Q&A?

6 A Yes.

7 Q Now, as I said, I have some rudimentary
8 understanding of computers, but when I frequently will
9 import files from one application into another it creates a
10 new file. It does not necessarily alter or affect the
11 original file. Is that true in this case?

12 A Yes.

13 Q So you imported the data? Is this a more accurate
14 way of stating it? You imported the data from the DBF files
15 into Q&A, and then it is that imported data that you used to
16 manipulate and go on with your process?

17 A I'm not sure how Q&A does its import function.
18 Maybe it writes something back to the file to tell you that
19 this has been imported, so it's going to write something to
20 the file. I am not sure on the mechanism of the import
21 function.

22 Q All right. That is fair. Did you consider
23 yourself having been done with the DBF file once you had
24 imported it into Q&A for your purposes?

25 A At that moment, no. No, I wasn't.

1 Q Okay. So this is a process that happens over
2 time?

3 A It was a trial and error if it worked or didn't
4 work.

5 Q Now, this was samples that you needed in order to
6 assist you in this development process, correct?

7 A Yes.

8 Q You had not yet developed this to anything that
9 was being used in any current official capacity? Is that
10 accurate?

11 A I was just updating the screen. You would punch
12 in an account number, and it would pull up some information.

13 Q Do you recall when it was that you obtained these
14 files from Mr. Sobel?

15 A I don't recall.

16 Q But you do know that you were working on this
17 project over a longer period of time, correct?

18 A The project of interfacing Lucky's data?

19 Q Yes.

20 A Yes. I talked to Craig on and off through my
21 period there about doing it. We had hoped to eventually, if
22 Mr. Kay had wanted to consult with Craig, to blow it out to
23 a full-fledged --

24 Q Do you --

25 A -- type of program.

1 Q Excuse me. I did not mean to cut you off. Do you
2 think you were working on this project for as much as a year
3 perhaps?

4 A I couldn't tell you. It was --

5 Q Was it more than a few months?

6 A It was complicated, and I started it, didn't work
7 on it. It was more it was over my head, so --

8 Q Okay. The purpose of the project was to try and
9 develop a means for you to be able to access and interface
10 with the Lucky's data, correct?

11 A Yes.

12 Q So having Lucky's data would be a pretty basic
13 part of that project, would it not, having the sample data?

14 A Yes.

15 Q So is it fair for me to assume that you would have
16 acquired these files, these sample data files, fairly early
17 on in the project?

18 A No, because you could have played around with -- I
19 could have made up some dummy data just to see if it would
20 work and then --

21 Q All right. Did you obtain the data from Mr. Sobel
22 more than one time?

23 A I don't recall. I don't believe so, no.

24 Q Okay. If you had to estimate, and I do not want a
25 guess, but try to estimate. Would you say you obtained the

1 data from Mr. Sobel a year before you left Lucky's? Excuse
2 me. Southland?

3 MR. SCHAUBLE: Excuse me, counsel. I just did not
4 hear. A year?

5 BY MR. KELLER:

6 Q I am asking if you estimate, would you estimate
7 that it was a year before you left Southland that you
8 obtained this data from Mr. Sobel?

9 A I don't know.

10 Q Well, is it fair for me to say that you did not do
11 much work on this project after you decided to leave
12 Southland?

13 A Once I was gone from the company?

14 Q Once you gave Mr. Kay notice, did you do any work
15 on the project?

16 A I don't recall. I don't believe so. Maybe. No.
17 I don't know.

18 Q It is not likely that you obtained the files after
19 you gave Mr. Kay notice, is it?

20 A No. No.

21 Q It is not likely. To the best of your memory, and
22 I realize this is only going to be an estimate on your part,
23 do you think it was months or weeks prior to the time you
24 gave Mr. Kay notice that you first obtained the data files
25 from Mr. Sobel?

1 A I don't know.

2 Q Are you aware that in the data files there are
3 fields that indicate things such as the last bill date?

4 A I didn't even look at them, so I don't --
5 probably.

6 Q Would it be fair to say that if there is such a
7 field that indicates when the last bill for a particular
8 customer was sent out would be -- obviously if there is an
9 indication in there that the last bill was sent out say in
10 January of 1997 that obviously you obtained the data files
11 at least subsequent to that time? Is that correct?

12 I mean, you would not have done anything that
13 would have altered the last bill date in the file, would
14 you?

15 A No.

16 Q So if there is a date in there for a last bill
17 date for a customer, then it stands to reason that you would
18 have obtained these files, assuming they had not been
19 altered or corrupted in any way, that you would have
20 obtained these files at least on or after that date,
21 correct?

22 A I believe so.

23 Q How familiar are you with this process of PKZIP or
24 the zip format?

25 A As far as how it functions?

1 Q Yes.

2 A No, I'm not familiar. You run it, and it zips the
3 files.

4 Q You have used this to zip and unzip files yourself
5 in the past?

6 A Yes.

7 Q So you know how to do that?

8 A Yes.

9 Q Is it true that that is a fairly standard utility
10 that is used at least in the DOS world, correct?

11 A Yes.

12 MR. KELLER: Give me one moment, Your Honor,
13 please. Could we take just a two minute break?

14 JUDGE CHACHKIN: Yes. Let's go off the record.

15 (Whereupon, a short recess was taken.)

16 BY MR. KELLER:

17 Q Mr. Cordaro, is it not true that when you took the
18 files off of Mr. Kay's computer -- let me rephrase that.

19 Is it not true that the files that were in your
20 garage in the box, the database files, were actually on two
21 floppy disks, two separate floppy disks, in DBF format when
22 you found them, and let me at the risk of getting an
23 objection for a compound question, and that in response to
24 the subpoena for which you went out and found these files,
25 you then zipped them up and put them onto one disk?

1 A Yes.

2 Q It is true you did that when you received the
3 subpoena in connection with the lawsuit in 1997, correct?

4 A Yes.

5 Q So that means at some point, for whatever
6 reason --

7 MR. WALLUCK: Can I interject? I am not sure if
8 this is an objection or a clarification. When you say
9 lawsuit, are you talking about the civil action or the FCC
10 filing?

11 MR. KELLER: I will tell you what. Thank you. I
12 should probably clarify that anyway.

13 BY MR. KELLER:

14 Q It is true that there was a civil action filed
15 against you. You testified earlier this morning about a
16 civil action filed against you by Mr. Kay in 1997. This
17 would be the first lawsuit by Mr. Kay against you, correct?

18 A I'm not exact on the dates, but, yes.

19 Q Well, you did say it was 1997, correct? It was
20 after you left Mr. Kay's employ, right?

21 A Yes, it was.

22 Q It was more than a year after you left Mr. Kay's
23 employ, correct?

24 A Yes.

25 Q In fact, is it not true that it was not too many

1 months before you were called in the first FCC deposition?

2 A I don't recall.

3 Q Can you recall whether it was less than a year
4 before you were called in the first FCC deposition?

5 A What are you asking?

6 Q That the lawsuit in which Mr. Kay sued you
7 regarding the management agreement was in 1997.

8 A I might have stated yes, 1997, but I'm not for
9 sure on it.

10 Q That is easy enough for us to establish.

11 A Yes.

12 Q I can represent to you that it was. That is not
13 evidence. That is just my representation for purposes of
14 this question.

15 But it is your recollection that in connection
16 with that lawsuit you received a subpoena to search for
17 documents relating to your involvement with Mr. Kay,
18 correct?

19 A Yes.

20 Q And you went to your garage and found a box of
21 items, and among those items was two floppy disks? There
22 may have been other floppy disks, but there were two disks
23 in particular, and those two disks contained a series of DBF
24 files that had come from the Southland computers, correct?

25 MR. WALLUCK: Excuse me. May I speak to the

1 witness just for a point of clarification. I think it will
2 help everyone to put this thing into a time sequence.

3 It is up to you, but I can tell you that his
4 response right now is probably going to be inaccurate.

5 MR. KELLER: Well, let me do this. Maybe I can
6 save some time if I can just read a few lines from the
7 deposition to clarify. This is the second FCC deposition of
8 Mr. Cordaro held on February 2, 1998.

9 JUDGE CHACHKIN: When was the first one?

10 MR. KELLER: The first one was December 10, 1997.

11 This is page 98 of the transcript, and I am going
12 to start reading at Line 3, page 98. It says:

13 "Q Okay. Were these files located in your
14 office at the time you left Mr. Kay's employment?"

15 "A Yes."

16 "Q Okay. Do you recall in what form there were
17 on? Let me ask you this. Were they on -- were these files
18 on a floppy disk, or were they on a hard drive on a
19 computer, or do you recall exactly where the files were?"

20 "A They were on both."

21 "Q Okay. Would it be correct -- well, let me
22 -- was the version of the files that you took with you when
23 you left Mr. Kay's employment on a floppy disk?"

24 "A They were on two floppy disks."

25 "Q Okay."

1 "A It was a backup. I put them all on one."

2 "Q Okay. When did you put the -- just so I am
3 clear, when -- originally the files were on two separate
4 floppy disks?"

5 "A Yes."

6 "Q Okay. You then created a zip file and put
7 the files onto one computer disk?"

8 "A Yes."

9 "Q You did so around the time you were served
10 with the lawsuit, correct?"

11 "A Yes."

12 BY MR. KELLER:

13 Q Now, first of all, did you understand everything I
14 just read there?

15 A Yes.

16 Q Is that consistent with your recollection?

17 A Yes.

18 Q Okay. So if I am reconstructing this, and I am
19 not trying to put words in your mouth. I am just trying to
20 clarify it so we all understand.

21 When you left Mr. Kay's employ, and I think you
22 testified to this this morning in response to one of the
23 questions the Judge asked you in which you grabbed the box,
24 and it had ten floppies in it. Two of those floppies had a
25 series of DBF files on them, correct?

1 A Yes.

2 Q And you are testifying that that box or those
3 disks resided in a box in your garage. When you were served
4 with the lawsuit, in response to a subpoena there you went
5 out and got those files, and at that time you zipped them up
6 and put them onto one floppy, correct?

7 It says:

8 "Q You did so around the time you were served
9 with the lawsuit, correct?"

10 "A Yes."

11 A I don't recall, but, yes.

12 Q You do not recall now. Would your memory have
13 been better back at the time you gave the deposition?

14 A Would it have been better?

15 Q Well, are you more likely to recall then or now?
16 Then you were asked a very specific question.

17 "Q You then created a zip file and put the
18 files onto one computer disk?"

19 "A Yes."

20 "Q You did this around the time you were served
21 with the lawsuit, correct?"

22 "A Yes."

23 You were not served with any lawsuit by Mr. Kay
24 prior to the time you left his employment, were you?

25 A No. I was served with another deposition.

1 Q I understand that. You did not produce any disks
2 or provide any documents in connection with that deposition,
3 did you?

4 A Yes, I did.

5 Q When was that deposition?

6 MR. KELLER: Does counsel know?

7 MR. WALLUCK: I tried to fill you in earlier. You
8 are doing your job.

9 BY MR. KELLER:

10 Q Mr. Cordaro, did you ever provide to Mr. Kay a
11 copy of this disk or these files in your possession prior to
12 the December 10, 1997, deposition?

13 A No.

14 Q Now, the lawsuit, the 1997 lawsuit. You do
15 understand that Mr. Kay sued you. You know it had something
16 to do with the management agreement, correct?

17 A Yes.

18 Q That is the management agreement that relates to
19 the SMR station for Rasnow Peak, correct?

20 A Yes.

21 Q Would it refresh your recollection if I told you
22 that the essence of his lawsuit, the complaint that he had,
23 was that you had failed to renew the license for that
24 station?

25 A No.

1 Q That would not refresh your recollection?

2 A No.

3 Q Did you renew the license for that station?

4 A No.

5 Q Are you aware that the license for that station
6 expired?

7 A No.

8 Q Do you recall receiving a notice from the FCC
9 regarding the upcoming expiration of the station and
10 providing you with a form to renew the license?

11 A No. I never received any forms.

12 Q Do you recall that your counsel and Mr. Kay's
13 California counsel reached an agreement whereby he dismissed
14 the lawsuit if you agreed to voluntarily show up at the
15 second FCC deposition?

16 A Yes.

17 Q And was the lawsuit so dismissed?

18 A The first one?

19 Q Yes.

20 A Yes.

21 Q But it is clear, even though we are a little vague
22 here on dates and times and this, that and the other, it
23 seems clear now, though, that the files were removed from
24 Mr. Kay's computer on two separate floppy disks, spent some
25 time in your garage, at which point you subsequently put

1 them onto one zip file, correct?

2 A Yes.

3 Q Are you aware, Mr. Cordaro, that when you use the
4 PKZIP program to zip up files that it collects the series of
5 files and in addition to compressing them, it places them
6 all into one file on the computer with an extension, a file
7 name .ZIP?

8 A Yes.

9 Q Is it correct that the file that you produced at
10 your December 10 deposition, that the zip file in question
11 was named DAD.ZIP?

12 A I don't recall the name of the data file.

13 MR. KNOWLES-KELLETT: We will stipulate to that.

14 MR. KELLER: Is that something we can stipulate
15 to?

16 MR. KNOWLES-KELLETT: Yes.

17 JUDGE CHACHKIN: All right. So stipulated.

18 BY MR. KELLER:

19 Q Are you aware that when you use the PKZIP program
20 it places a date stamp on the resulting zip file?

21 A No.

22 Q Where was your desk or your office or your work
23 station, whatever you want to call it, at Southland? Where
24 was it physically located?

25 A Compared to what?

1 Q Well, you testified that you were there the day
2 that some FCC inspectors came to look at some equipment in
3 the so-called tech room.

4 When you refer to the tech room, are you referring
5 to the room that is off of Ms. Ashauer's office?

6 A Yes.

7 Q Where is your desk in relation to Ms. Ashauer's
8 office?

9 A On the other end of the building.

10 Q On the other end of the building?

11 A Yes.

12 Q Is it true that you have to walk through a whole
13 section of the building through a door then to get to Ms.
14 Ashauer's office?

15 A Yes.

16 Q And then you walk through another door to get to
17 the tech room?

18 A Yes.

19 Q You cannot view the tech room from your desk, can
20 you?

21 A Correct. No.

22 Q You were not physically present in the tech room
23 during the FCC inspection, were you?

24 A No, I was not.

25 Q Now, you testified that your understanding of a

1 cross band repeater is a device which receives a signal on
2 one frequency and re-transmits it on another frequency,
3 correct?

4 A Yes.

5 Q Is that not the definition of a repeater? Is that
6 not what repeaters do?

7 A Yes.

8 Q So is every repeater a cross band repeater?

9 A It could be.

10 MR. KELLER: If I could have a moment, Your Honor?
11 I think I am just about done, but I am fearful there is
12 something I am forgetting.

13 (Pause.)

14 If you will just give me a moment to review some
15 documents, I think I am just about done.

16 JUDGE CHACHKIN: All right. Can we go off the
17 record?

18 MR. KELLER: I believe this can be off the record.

19 JUDGE CHACHKIN: Off the record.

20 (Whereupon, a short recess was taken.)

21 MR. KELLER: First of all, Your Honor, I would
22 like to give, and I do not have enough copies of this. For
23 the moment I will give the court reporter one copy. This is
24 all the copies I have.

25 I would like this to be marked as Kay Exhibit 8,

1 please. This is a two page document on the letterhead of
2 VSC Enterprise. One page is a form letter written out, but
3 the blanks are not filled in. The second page is a more
4 complete version with also a signature and dates on it.

5 (The document referred to was
6 marked for identification as
7 Kay Exhibit No. 8.)

8 BY MR. KELLER:

9 Q Mr. Cordaro, do you recognize this document or
10 these documents? It is a two page document.

11 A I'm sorry. What's the question?

12 Q Do you recognize this document?

13 A Yes.

14 Q Is this your letterhead, the letterhead you were
15 using in the April of 1992?

16 A Yes.

17 Q Is that your signature on the second page, the
18 first signature on the page?

19 A It looks like it, yes.

20 Q Pardon me?

21 A Yes.

22 MR. KELLER: Your Honor, I would like to move the
23 admission of this document with leave to withdraw it to get
24 copies made.

25 JUDGE CHACKIN: Any objection?

1 MR. SCHAUBLE: Objection to relevance, Your Honor.

2 JUDGE CHACHKIN: All right. What is the
3 relevance?

4 MR. KELLER: The relevance, Your Honor, is there
5 have been suggestions here that Mr. Cordaro was not
6 operating this business enterprise, et cetera.

7 Whether he was or he was not, the issue is Mr. Kay
8 certainly believed he was. This is at least one
9 corroborating piece of evidence that led Mr. Kay to so
10 believe.

11 MR. KNOWLES-KELLETT: I think, Your Honor, that he
12 mischaracterized the testimony. I think that the witness
13 admitted that he was operating VSC. He just was not using
14 radios. This does not corroborate that he was using radios
15 at all.

16 MR. KELLER: This corroborates that he was engaged
17 in an independent business activity separate and apart from
18 Mr. Kay.

19 MR. KNOWLES-KELLETT: He testified to that.

20 JUDGE CHACHKIN: I do not believe he did. In any
21 event, I will receive it. Kay Exhibit 8 is received. The
22 record will reflect what it reflects.

23 //

24 //

25 //

1 (The document referred to,
2 having been previously marked
3 for identification as Kay
4 Exhibit No. 8, was received in
5 evidence.)

6 JUDGE CHACHKIN: Permission is granted to make
7 copies.

8 All right. Anything further?

9 MR. KELLER: I would now like to give the court
10 reporter what I would ask to be marked as Exhibit 9.

11 Your Honor, these are excerpt pages from the
12 Wireless Telecommunication Bureau's response to Kay's first
13 set of interrogatories. The excerpt includes the first page
14 of that document and then excerpts from page 18 and 19. The
15 materials that I am not offering are x'd through or excised
16 through there.

17 I also got the last page and the declaration page
18 simply to date the document, if you will.

19 JUDGE CHACHKIN: All right. The document will be
20 marked as --

21 MR. KELLER: Your Honor, I would move the
22 admission of this document.

23 JUDGE CHACHKIN: First of all --

24 MR. KELLER: It is interrogatory answers responded
25 to under oath by the Bureau.

1 MR. SCHAUBLE: Your Honor, I object on the basis
2 of relevance.

3 JUDGE CHACHKIN: Wait a minute. Wait a minute.
4 First let me mark for identification the exhibit consisting
5 of the Bureau's response to Kay's first set of
6 interrogatories. That will be marked for identification as
7 Kay Exhibit 9.

8 (The document referred to was
9 marked for identification as
10 Kay Exhibit No. 9.)

11 JUDGE CHACHKIN: What is your objection?

12 MR. SCHAUBLE: I object first on the basis of
13 relevance. Two, there has been no foundation laid with
14 respect to this witness that he has even seen this document.

15 MR. KELLER: Your Honor, my moving for admission,
16 and I am going to ask the witness questions about this
17 document, but this witness is not necessary to authenticate
18 this document. It is a document sworn to under oath by the
19 Bureau.

20 I would note that the Bureau has also introduced
21 Kay's response to interrogatories, which were similarly
22 admitted, in fact, some very critical exhibits in the
23 Bureau's case.

24 MR. SCHAUBLE: Your Honor, I have not heard any
25 explanation as to why this particularly is relevant to a

1 determination of what Mr. Kay has done, which is the focus
2 of this proceeding.

3 JUDGE CHACHKIN: How is this relevant, this
4 document?

5 MR. KELLER: This document is relevant, Your
6 Honor, because in particular it relates to the relationship
7 between Mr. Kay and this witness in this proceeding.

8 This witness, while still in Mr. Kay's employ, was
9 identified by Mr. Kay in March, on March 8, 1995, as someone
10 who apparently the Commission believed or somehow the
11 Commission believed had information that Kay had misused or
12 abused the Commission's processes. This led to an exchange
13 between Mr. Kay, which I will ask the witness about.

14 Also, the timing, et cetera, has relevance to
15 other issues that I would rather not go into right now.

16 JUDGE CHACHKIN: I will withhold the ruling while
17 you ask your questions.

18 BY MR. KELLER:

19 Q Mr. Cordaro, did there come a time while you were
20 still in Mr. Kay's employ that he called you into his office
21 and advised you that he had become aware that your name had
22 shown up on a list provided to him by the Commission of
23 people who had information relevant to the investigation
24 that the Commission was conducting about him?

25 A Yes.

1 Q Did he show you a document at that time?

2 A No.

3 Q I would ask you to look at this document, and I
4 would ask you to look in particular at the page marked 15 at
5 the bottom. Looking at the sentence, do you see the
6 sentence there that begins, "In addition, Gary Van Diest?"

7 A Yes.

8 Q Reading through that sentence, it says, "In
9 addition, Gary Van Diest, Don Ro, d/b/a Accurate Concrete,
10 Browning Ferris Industries, PCL Freight Service, Dave and
11 Carla Pfeifer, Charles and Cornelia Dray, Vincent Cordaro,
12 Richard Lewis, Edward Lewis, Roy Jensen, Kevin Hessman,
13 Robert Brown and Dr. Michael Steppe are believed to have
14 direct knowledge of relevant facts relating to instances of
15 abuse of process."

16 MR. SCHAUBLE: One correction, counsel. You said
17 Edward Lewis. I believe the name is Edward Cooper.

18 MR. KELLER: Edward Cooper.

19 BY MR. KELLER:

20 Q At any rate, my focus right now is your name is in
21 that list, Vincent Cordaro, correct?

22 A Yes.

23 Q Do you have any knowledge as to why the Bureau
24 included your name in that list?

25 A No.

1 Q Had you, as of March of 1995, provided any
2 information to the Bureau?

3 A No.

4 Q What transpired when Mr. Kay called you into his
5 office on this?

6 A He just made a statement that my name was on a
7 list.

8 Q Did he ask you any questions?

9 A He asked me if I had -- well, he asked me if I had
10 talked to the FCC. I said no.

11 Q Had you given Mr. Kay notice at this time?

12 A Which time?

13 Q As of March 8, 1995.

14 A I don't recall the exact date I gave notice.

15 MR. KELLER: I have no further questions for this
16 witness, Your Honor.

17 JUDGE CHACHKIN: All right. I have not seen where
18 you have established the relevance of this.

19 MR. KELLER: Your Honor, I can --

20 JUDGE CHACHKIN: The witness has testified that he
21 did not --

22 MR. KELLER: I will address that after they finish
23 cross-examining the witness. I will make a further
24 statement.

25 JUDGE CHACHKIN: All right. I will withhold

1 ruling.

2 Any redirect?

3 MR. SCHAUBLE: Your Honor, I think there should be
4 a ruling at this time. If he is going to make a further
5 statement, we should have a chance to --

6 MR. KELLER: Your Honor, let me do this. Let me
7 do this, Your Honor. I have no problem with your
8 withholding ruling on this.

9 I do have questions for some of our witnesses. I
10 want to question Mr. Kay regarding this document. I
11 would --

12 JUDGE CHACHKIN: I will withhold ruling on it.

13 MR. KELLER: Could I ask one question of the
14 witness before they proceed?

15 JUDGE CHACHKIN: Go ahead.

16 BY MR. KELLER:

17 Q When Mr. Kay called you into his office, did he
18 advise you that he had learned about your name being on this
19 list because of a fax he had received from his attorneys?

20 A I don't recall how he obtained it.

21 MR. KELLER: No further questions.

22 JUDGE CHACHKIN: All right. Redirect?

23 MR. SCHAUBLE: Your Honor, could I have one moment
24 to --

25 JUDGE CHACHKIN: All right.

1 (Whereupon, a short recess was taken.)

2 JUDGE CHACHKIN: Back on the record.

3 REDIRECT EXAMINATION

4 BY MR. SCHAUBLE:

5 Q Mr. Cordaro, please direct your attention to what
6 has now been received in evidence as WTB Exhibit 314.

7 A Yes.

8 Q Do you recall who you received this document from?

9 A No.

10 MR. SCHAUBLE: Your Honor, I would like to read a
11 portion of the deposition into the record to refresh the
12 witness's recollection.

13 JUDGE CHACHKIN: Go ahead.

14 MR. SCHAUBLE: This is from the December 10, 1997,
15 deposition, page 17.

16 MR. KNOWLES-KELLETT: First of all, we have
17 established and I think we have agreed that it was Cordaro
18 Exhibit 7.

19 MR. KELLER: Yes.

20 JUDGE CHACHKIN: All right. Go ahead.

21 BY MR. SCHAUBLE:

22 Q Starting at Line 1:

23 "Q I am showing you a document now marked
24 Cordaro Exhibit No. 7. It is a four page letter. It
25 appears to be -- it's addressed to Mr. Ralph Haller, and it

1 is from Dennis Brown with a place for your affidavit at the
2 end. It was not executed. Can you describe that letter?"

3 "A Again, I was -- I'm not aware of what the
4 letter really has any sense to it. It was just given to
5 me."

6 "Q By who?"

7 "A By James Kay."

8 Does that refresh your recollection in any way,
9 Mr. Cordaro?

10 A No.

11 MR. SCHAUBLE: No further questions, Your Honor.

12 JUDGE CHACHKIN: All right. We will be in recess
13 until 9:00 a.m. We will take one witness, and then we will
14 recess so that you can talk to two of the witnesses.

15 MR. SCHAUBLE: Right. The Marshalls tomorrow.

16 (Whereupon, at 4:00 p.m. the hearing was
17 adjourned, to reconvene at 9:00 a.m. on Wednesday,
18 January 13, 1999.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 94-147

CASE TITLE: IN RE: JAMES A. KAY, JR.

HEARING DATE: January 11, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 1-12-99

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